

No. 12209

United States
Court of Appeals
for the Ninth Circuit

FREDA MARY VOKAL, CHARLES DAVISON
and ROMEYN B. SAMMONS, Executors of
the Estate of Paul F. Vokal, Deceased,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

United States
Court of Appeals
for the Ninth Circuit

FREDA MARY VOKAL, CHARLES DAVISON
and ROMEYN B. SAMMONS, Executors of
the Estate of Paul F. Vokal, Deceased,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Amended Answer to Amended Complaint	16
Amended Complaint	3
Exhibit A—Renegotiation Agreement	9
Appeal:	
Certificate of Clerk to Transcript of Record on	50
Designation of Record on (DC)	47
Designation of Additional Record on (DC)	49
Notice of	43
Statement of Points on (DC)	43
Statement of Points and Designation of Record on (USCA)	52
Certificate of Clerk to Transcript of Record on Appeal	50
Complaint, Amended	3
Designation of Additional Record on Appeal (DC)	49
Designation of Record on Appeal (DC)	47
Designation of Record, Statement of Points and (USCA)	52

	PAGE
Findings of Fact and Conclusions of Law.....	36
Judgment, Summary	40
Motion for Summary Judgment, Notice of.....	31
Names and Addresses of Attorneys.....	1
Notice of Appeal	43
Objections to Proposed Summary Judgment....	32
Objections to Plaintiff's Finding of Fact and Conclusions of Law.....	34
Order Substituting Executors of Estate as Par- ties Defendants	30
Statement of Points on Appeal (DC).....	43
Statement of Points and Designation of Record on Appeal (USCA)	52
Summary Judgment	40
Summons	2

NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

R. B. SAMMONS,
411 W. 5th St.,

FRANK C. SHOEMAKER,
5975 S. Broadway,
Los Angeles 3, Calif.

For Appellee:

JAMES M. CARTER,
United States Attorney,

CLYDE C. DOWNING,
BERNARD B. LAVEN,
Assistants U. S. Attorney,
600 U. S. Post Office & Court House Bldg.,
Los Angeles 12, Calif. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

District Court of the United States for the
Southern District of California,
Central Division

Civil Action File No. 6045-WM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PAUL F. VOKAL, FREDA MARY VOKAL,

Defendants.

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon James M. Carter, Robert E. Wright, plaintiff's attorneys, whose address is 600 Federal Building, Los Angeles 12, Calif., an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

(Seal)

EDMUND L. SMITH,
Clerk of Court.

By /s/ EDWARD F. DREW,
Deputy Clerk.

Date: 12/2/46. [10]

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California—ss:

I hereby certify and return that I served the annexed Summons & Complaint on the therein-named Paul F. Vokal and Freda Mary Vokal by handing to and leaving a true and correct copy thereof with them personally at their home in Pasadena in said District on the 6th day of December, 1946.

ROBERT E. CLARK,
U. S. Marshal.

By /s/ C. W. ROSS,
Deputy.

Marshal's Fees, \$4.00; mileage, \$.70; Total, \$4.70.

[Endorsed]: Filed Dec. 18, 1946. [11]

[Title of District Court and Cause.]

AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT

United States of America, plaintiff, by James M. Carter, its attorney, in and for the Southern District of California, complains of Paul F. Vokal and Freda Mary Vokal, defendants, and, upon information and belief, alleges:

I.

That defendants reside in the County of Los Angeles, California; defendant Paul F. Vokal does business as a sole proprietor at 4626 Pacific Boule-

vard in the City of Los Angeles, and that defendant Freda Mary Vokal is the wife of defendant Paul F. Vokal.

II.

This action is brought pursuant to Title 28 U.S.C. Section 41(1) and Title 28 U.S.C. Section 400.

III.

That under date of December 19, 1944, a Renegotiation Agreement for the refund of excessive profits was entered into between plaintiff and [35] defendants, a copy of which is hereto annexed, marked Exhibit "A," and by reference made a part hereof.

IV.

The tax credit to which defendants are entitled under Section 3806 of the Internal Revenue Code is in the amount of Thirteen Thousand One Dollars and Twenty-two Cents (\$13,001.22). This tax credit is computed upon the assumption that profits determined to be excessive were returned as income by defendant for tax purposes and that the appropriate taxes have been or will be paid upon such profits.

V.

That defendants received a fully executed counterpart of said Renegotiation Agreement and written notice of the tax credit referred to in Paragraph IV of said agreement on July 7, 1945; that on July 13, 1945, defendants paid plaintiff the sum of Eleven Thousand One Hundred Thirty-six Dollars (\$11,136)

to apply on the amount due plaintiff pursuant to the terms of said agreement, but thereafter failed and defaulted in the making of any further or additional payments to apply in discharge of the amount due, pursuant to the terms of said Renegotiation Agreement.

VI.

Thereafter, the Secretary of War, acting pursuant to authority delegated to him by the Renegotiation Act and particularly Section 403(c)(2)(C) thereof, issued directives to Garrett Corporation, a corporation, California Institute of Technology, and Douglas Aircraft Company, Inc., directing said corporations and institution to withhold for the account of the United States from the amounts otherwise due to the defendant Paul F. Vokal as follows:

(a) On November 15, 1945, the Secretary of War ordered Garrett Corporation, a corporation, to so withhold the sum of Fifteen Thousand Dollars (\$15,000), which order was modified by a subsequent order dated May 28, 1946, whereby Garrett Corporation was directed to withhold the sum of Five Thousand One Hundred Twenty Dollars and Eighty-nine Cents (\$5,120.89), pursuant to which withholding order [36] as so amended, said Garrett Corporation has withheld for the account of the United States from amounts otherwise due to defendant Paul F. Vokal, the sum of Five Thousand One Hundred Twenty Dollars and Eighty-nine Cents (\$5,120.89).

(b) On November 15, 1945, the Secretary of War ordered California Institute of Technology to so

withhold the sum of Fifteen Thousand Dollars (\$15,000), which order was modified by a subsequent order dated May 28, 1946, whereby California Institute of Technology was directed to withhold the sum of Six Thousand Seven Hundred Seventy-eight Dollars and Fifteen Cents (\$6,778.15), pursuant to withholding order as so amended, said California Institute of Technology has withheld for the account of the United States from amounts otherwise due to defendant Paul F. Vokal, the sum of Six Thousand Seven Hundred Seventy-eight Dollars and Fifteen Cents (\$6,778.15).

(c) On May 5, 1946, the Secretary of War ordered Douglas Aircraft Company, Inc., to so withhold the sum of Three Thousand Dollars (\$3,000), which order was modified by a subsequent order dated May 28, 1946, whereby Douglas Aircraft Company, Inc., was directed to withhold the sum of Two Thousand Seven Hundred Sixty-three Dollars and Seventy-nine Cents (\$2,763.79), pursuant to which withholding order as so amended, said Douglas Aircraft Company, Inc., has withheld for the account of the United States from amounts otherwise due to defendant Paul F. Vokal, the sum of Two Thousand Seven Hundred Sixty-three Dollars and Seventy-nine Cents (\$2,763.79).

(d) The aggregate of the amounts so withheld as aforesaid, does not exceed the amount due the United States, pursuant to said Renegotiation Agreement, including interest, as provided by Paragraph IV of said agreement.

VII.

Garrett Corporation, a corporation, California Institute of Technology, and Douglas Aircraft Company, Inc., were all and each of them was, [37] a prime contractor during all of the time covered by said Renegotiation Agreement, engaged in the performance of contracts with the United States for the production of war material, and the defendant Paul F. Vokal was, during said time, a sub-contractor employed by said prime contractors to perform services and produce parts necessary to the performance of said prime contracts.

VIII.

Defendants have asserted that said Renegotiation Agreement is void and of no effect, have threatened said Garrett Corporation, California Institute of Technology, and Douglas Aircraft Company, Inc., with suit for the collection of the amounts so withheld, and defendant Paul F. Vokal has, in fact, filed two suits in the Superior Court of Los Angeles County for the recovery of the amounts withheld by said Garrett Corporation and California Institute of Technology, which said suits are entitled and numbered as follows:

Paul F. Vokal, Plaintiff, v. California Institute of Technology, Defendant. No. 510156;

Paul F. Vokal, Plaintiff, v. Garrett Corporation, a corporation, Defendant. No. 508756;

in each of which suits said Paul F. Vokal seeks re-

covery from each of the defendants named in said suits, of the amounts so withheld, on the ground as he asserts in said suits, that said Renegotiation Agreement is void and that the withholding orders aforesaid are without authority and void. Both of the suits so filed by defendant Paul F. Vokal in the Superior Court are still pending and undisposed of.

Wherefore, Plaintiff Prays for a Declaratory Judgment finding that said Renegotiation Agreement hereinabove referred to is wholly valid and enforceful; that the defendants have no interest in any amounts withheld by Garrett Corporation, a corporation, California Institute of Technology, and Douglas Aircraft Company, Inc., pursuant to the withholding orders aforesaid, and have no right to the recovery by suit or otherwise to any of said amounts; and that the defendant Paul F. Vokal be restrained from further prosecuting his [38] aforesaid suits now pending in the Superior Court against Garrett Corporation and California Institute of Technology; and that the plaintiff have such other and further relief as shall to the Court seem just and proper.

JAMES M. CARTER,
United States Attorney,

RONALD WALKER,
Assistant U. S. Attorney,

/s/ ROBERT E. WRIGHT,
Assistant U. S. Attorney,
Attorneys for Plaintiff. [39]

EXHIBIT "A"

W 04-235 AG PAS No. 498

War Contracts Price Adjustment Board

War Department

Army Air Forces

Air Technical Service Command

Western District

RENEGOTIATION AGREEMENT

This agreement is entered into as of the 19th day of December, 1944, by and between the United States of America (hereinafter referred to as "the Government") and Paul F. Vokal, a sole owner, doing business as Special Tools and Machinery Company, having his principal office at 4626 Pacific Boulevard, Los Angeles, California (hereinafter designated as "the Contractor"), and Freda Mary Vokal, a resident of the State of California, who, during all of the time referred to in this Agreement, was the wife of the aforementioned Paul F. Vokal, and who, by virtue of the Community Property Laws of the State of California affecting the property rights of husband and wife, is vested with certain rights and interest in and to the property of said Paul F. Vokal which is the subject matter of this Agreement, and by reason thereof made a party to this Agreement, and hereinafter designated as the "Wife."

1. Profits to be Eliminated. As a result of renegotiation pursuant to the Renegotiation Act, the Government and the Contractor hereby determine and agree that Thirty-eight Thousand Four Hundred

Forty-two Dollars and Twenty-six Cents (\$38,442.26) of the profits derived by the Contractor from contracts and subcontracts of the Contractor which are subject to renegotiation under the Renegotiation Act (hereinafter referred to as "said contracts and subcontracts") represent the amount of profits received or accrued under said contracts and subcontracts during the Contractor's fiscal year ended December 31, 1943 (hereinafter referred to as "said fiscal year"), which pursuant to the Renegotiation Act should be eliminated.

The amount of profits to be eliminated hereby has been determined by taking into consideration the application of the \$500,000 limitation set forth in subsection (c)(6) of the Renegotiation Act as interpreted by paragraph 348.3 of the Renegotiation Regulations.

2. Warranty. This agreement has been entered into in reliance, among [41] other things, upon the representations of the Contractor, including the financial and other data submitted by the Contractor upon the basis of which the statement set forth in Exhibit "A" annexed hereto and made a part hereof was prepared.

The Contractor warrants that the representations made by it to the Government in connection with this renegotiation are true and correct to the best knowledge, information and belief of the Contractor and that to his best knowledge, information and belief, the Contractor has disclosed all material facts required to make the Contractor's representations complete and not misleading.

3. Tax Credit Under Section 3806 of the Internal Revenue Code. The Contractor and the wife represent that the profits, the amount of which is agreed in Article 1 hereof to be eliminated, were included in income in the Contractor's and wife's Federal income tax returns for said fiscal year and that the Contractor and the wife have applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the assessments made to the date of such computation, of the amount by which the taxes of the Contractor and his wife for said fiscal year payable under Chapter 1 of the Internal Revenue Code are decreased by reason of the application of Section 3806 of the Internal Revenue Code. The amount, if any, so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated.

4. Terms of Payment. The Contractor agrees to pay to the Government the amount agreed in Article 1 hereof to be eliminated, less the tax credit, if any, applicable thereto pursuant to Article 3 within ten (10) days after the Contractor shall have received a fully executed counterpart of this agreement or written notice of the amount of the tax credit, whichever is later.

Payment shall be made by check to the order of the Treasurer of the United States and forwarded to the Commanding General attention of Budget and Fiscal Officer at 3636 Beverly Boulevard, Los Angeles, California. Interest at the rate of six (6) per centum per annum shall accrue and shall be payable upon each

payment due under this agreement from and after the due date thereof. [42]

5. Additional Profits to be Eliminated. If, as a result of the elimination of the amount of profits determined pursuant to Article 1 hereof, the Contractor shall either receive a refund (whether by repayment or credit) or shall recognize a reduction in its liability (by giving effect thereto on its books) in respect of any item which was allowed as an item of cost in the determination of such profits, then promptly thereafter, the Contractor shall pay to the Government, as additional profits which should be eliminated a sum equal to the amount of such refund or reduction in liability, by the delivery to the Commanding General attention of Budget and Fiscal Officer at 3636 Beverly Boulevard, Los Angeles, California, of a check payable to the order of the Treasurer of the United States in such amount.

In the elimination of said additional profits the Contractor shall be allowed the tax credit, if any, provided by Section 3806 of the Internal Revenue Code.

6. Covenant Against Contingent Fees. The Contractor warrants that he has not employed any person to solicit or secure this agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warrant shall give the Government the right to annul this agreement.

7. Officials Not to Benefit. No member of or delegate to Congress or resident commissioner or any other person in the employ or service of the United

States shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

8. **Discharge of Liability.** This agreement shall be final and conclusive according to its terms, and performance by the Contractor in accordance herewith shall be in full discharge of all liability of the Contractor under the Renegotiation Act for excessive profits received or accrued under said contracts and subcontracts for the fiscal year covered hereby and, except upon a showing of fraud or malfeasance or a wilful misrepresentation of a material fact, this agreement shall not for the purpose of the Renegotiation Act be reopened as to the matters agreed upon, and shall not be modified by any officer, employee, or agent of the United States, and this agreement and any determination made in accordance herewith shall not be annulled, modified, set aside, or disregarded in any suit, action or proceeding.

9. **Renegotiation Rebate.** Nothing contained in this agreement shall prejudice any right which the Contractor may have to recover a renegotiation rebate pursuant to subsection (a)(4)(D) of the Renegotiation Act.

10. **Execution of Agreement.** This agreement has been duly executed by or on behalf of the Contractor pursuant to proper authority and by or on behalf of the Government by the War Contracts Price Adjust-

ment Board by his duly authorized representative to whom authority to execute this agreement has been delegated by the War Contracts Price Adjustment Board pursuant to subsection (d)(4) of the Renegotiation Act.

In Witness Whereof, the parties hereto have executed this agreement in three (3) counterparts as of the day and year above written.

/s/ PAUL F. VOKAL,

A sole owner, doing business under the firm name and style of Special Tools and Machinery Company.

/s/ FREDA MARY VOKAL,

UNITED STATES OF AMERICA,

By /s/ D. E. STACE,

Brigadier General, U.S.A. Commanding, Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

Witnessed: This 19th day of December, 1944.

By M. L. HEARN

Address, 2208 Gatewood,
Los Angeles, Calif.

Page 6 of Renegotiation Agreement, Dated Dec. 19, 1944, with Special Tools, and Machinery Company. [44]

Special Tools and Machinery Company (A Sole Proprietorship)
Comparative Statement of Profit and Loss. Fiscal Year Ended
December 31, 1943.

(in dollars)	After Renegotiation		Before Renegotiation	
	Renego.	Total	Renego.	Non-Rene.Totl.
Sales (less allowances, discounts, etc.)				
Fixed Price	500,000	500,000	538,442	None 538,442
Cost of Sales (less discounts)	365,253	365,253	365,253	365,253
Selling and Advertising Expenses				
General and Administrative Expenses	32,837	32,837	32,837	32,837
Operating Profit	101,910	101,910	140,352	140,352
Other Applicable Items				
a. Interest Paid	143	143	143	143
b. Other Applicable Income	39,799	39,799	39,799	39,799
Profit before Adjustments..	141,566	141,566	180,008	180,008
Renegotiation Adjustments	23,952	23,952	23,952	23,952
Basic Profit for Renegotiation—				
Fixed Price	117,614	117,614	156,056	156,056
State Taxes Measured by Income	-----	-----	-----	-----
Total Profit Adjusted for Renegotiation	117,614	117,614	156,056	156,056
Renegotiation Adjustments Net		14,700		14,700
Net Profit before Provision for Federal Taxes on Income and Extraordinary Reserves		102,914		141,356
Tentative Amount of Determination.....			\$90,000.00	
Adjustment for State Taxes on Income.....			1,963.34	
“Excess Inventory” Adjustment			-----	
Net Determination			\$88,036.66	
Maximum Recapture allowable under Renegotiation Regulations, Sec. 348.3.....			\$38,442.26	

F.M.V. P.F.V.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 3, 1947. [45]

[Title of District Court and Cause.]

AMENDED ANSWER TO AMENDED COMPLAINT

The defendants, by Romeyn B. Sammons their attorney, for their amended answer to the amended complaint in the above-entitled action:

I.

Admit the allegations contained in paragraphs I, II, III and VIII of said amended complaint.

II.

Deny each and every allegation contained in paragraph IV of said amended complaint.

III.

Admit the allegations contained in paragraph V of said amended complaint, but allege that defendants paid said sum of \$11,136 on July 13, 1945, to plaintiff under protest and without prejudice to or waiver of their rights in the premises, and they further allege with respect thereto that plaintiff had no right to the receipt of said money under the Renegotiation Act of 1943, [99] and now has no right to the retention thereof, but that the same is the property of these defendants.

IV.

Deny each and every allegation contained in paragraph VI of said amended complaint, except they do not deny that plaintiff's agents ordered withheld from defendants the sums set forth in subdivisions (a), (b) and (c) thereof, at the times, in the manner,

and from such of defendants' debtors as are therein set forth.

V.

On information and belief deny each and every allegation contained in paragraph VII of said complaint, except they do not deny that defendant Paul F. Vokal performed services and furnished machine parts to the corporations therein mentioned.

VI.

Deny each and every allegation contained in said amended complaint not hereinbefore specifically admitted, controverted or denied.

For Their First Separate and Affirmative Defense to the Amended Complaint Herein the Defendants Allege on Information and Belief:

I.

That by reason of the facts hereinafter set forth, said instrument dated December 19, 1944, a copy whereof is annexed to the amended complaint and marked Exhibit A, is illegal and void; that the same lacks mutuality and reciprocity of consideration and obligation on the part of either of the parties thereto in that the plaintiff, its agents and servants had no jurisdiction of the subject matter thereof; that the agents and servants of the plaintiff committed fraud on defendants prior to and at the time of the signing of said instrument.

II.

That between April 15, 1944, and December 20, 1944, the [100] Price Adjustment Section, Headquarters, Western District, Air Technical Service

Command, local representatives of the War Contracts Price Adjustment Board, which latter was the agent of the plaintiff with respect to the matters hereinafter set forth; and which Board purported to be functioning and proceeding pursuant to and in compliance with the law and the Renegotiation Act of 1943, which was applicable to defendants as their fiscal year ended after June 30, 1943. That during said period of time said Board, its officers, agents and servants hereinafter termed the Board, in its said capacity, as agent for the plaintiff, for the purpose of inducing the defendants to enter into and execute said agreement of December 19, 1944, falsely and by fraud or malfeasance, or by willful misrepresentations, stated and represented to the defendants as follows, to-wit:

That defendants' gross receipts for the fiscal year 1943, subject to renegotiation under said Renegotiation Act of 1943, were \$538,442; that defendants' profits received or accrued therefrom and subject to said Act were \$156,055.59; that the sum of \$38,442.26 were excessive profits and subject to recapture pursuant to said Act; that the net amount actually to be recaptured from defendants after offsetting tax credits would be negligible in amount; that the computations and findings of said Board would be ratified and confirmed by the Bureau of Internal Revenue in its adjustment of defendants' income tax liabilities, and that said Bureau would adjust and determine defendants gross receipts and profits received or accrued in the same amount as found by said Board; that said Board was not bound by the

computations and conclusions of said Bureau in determining defendants' tax liabilities; that defendants had received or accrued gross receipts from renegotiable contracts for said fiscal year in excess of \$500,000; that defendants were subject to said Act of 1943; that defendants had received or accrued excessive profits for said fiscal year [101] within the purview and intent of said Act; that defendants had received or accrued profits during said fiscal year which were subject to said Act, were within the scope of the powers and jurisdiction of said Board, and that certain portions thereof were subject to recapture by said Board; that defendants were not entitled to the credit for and deduction from their gross receipts of the sum of \$22,888.88 expended and disbursed by them during 1943 as ordinary and necessary expenses of the business; that said Board had the power to arbitrarily add the sum of \$47,871.41 to defendants net income for such fiscal year 1943; that said Board had the authority to include the gross sales price of certain work in process in defendants' income for 1943, which aggregated the sum of \$45,162.58, even though such work in process represented items of certain unfinished and uncompleted contracts which were neither due, nor payable or collectable by defendants, nor lawfully accrued during said year 1943; that said Board had the right and power to disallow to defendants the amount of \$39,799.04 as the beginning inventory and other adjustments of defendants and to add said amount to the net income of defendants; that said Board had the power and authority to arbitrarily add the total sum

of \$84,993.83 (less the Board's adjustment of \$37,-122.46) to defendants' net income; that said Board had the power and authority to increase defendants true net income of \$108,184.18 to the sum of \$156,-055.59, an arbitrary increase of \$47,871.41; that offsetting tax credits of \$13,001.22 allowable under section 3806(b) of the Internal Revenue Code were the maximum amount to which defendants were entitled; that said offsetting tax credits could be lawfully computed and applied by said Board on an entirely different method and basis from that followed by the Bureau of Internal Revenue in computing defendants' income tax liabilities; that notwithstanding the provisions of section 403(i)(1)(D) of said Act of 1943 the same applied to the contracts and transactions [102] had by defendants with California Institute of Technology, a corporation and one of defendants' vendees, and that said Board had the power and authority to include in defendants' profits received or accrued and subject to renegotiation the sum of \$3,624.84 theretofore paid defendants by said Institute; that said Act of 1943 applied to certain other purchase orders, contracts, and transactions aggregating in amount \$65,576.50 received by defendants during said year 1943 from divers vendees, notwithstanding that the same were neither purchased by nor for the plaintiff, its Departments, agencies, servants, or for the end-use thereof, and no part of which were subject to renegotiation.

III.

That said statements and representations so made by said Board were wholly false and untrue. That

said Board made such statements and representations as of their own personal knowledge for the purpose of inducing defendants to act thereon and to execute said agreement with plaintiff, with the intent defendants would believe that such statements and representations were made on the Board's personal knowledge; that said Board assumed and intended and did convey to defendants the impression that they had actual knowledge of the matters so stated; that such statements and representations were so made by said Board without having knowledge whether they were true or false, and having no reasonable grounds to believe them to be true, or were conscious that they had no such knowledge, or were informed or knew of facts and circumstances sufficient to cause them to suspect the falsity thereof which facts and circumstances were unknown to defendants, or were made by said Board with reckless disregard of the injury which might thereby be caused to defendants; that the same were either known to be false when made or the Board should have known the same to be false; that the truth, if known to said Board, was concealed and suppressed from these defendants; that defendants [103] believed said statements and representations so made by said Board, and relied and acted thereon and signed said agreement to their great loss and damage as herein appears; that defendants had no part in the preparation of said agreement, were not consulted in its drafting or regarding its contents, and were given no alternative except to sign the same or

face a unilateral order fixing their alleged excessive profits.

IV.

That during said period of several months prior to the execution of said Agreement of December 19, 1944, said Board examined and audited defendants' books and accounts on several occasions and were supplied by defendants with all the information requested by said Board and which was known to defendants; that said Board was fully and adequately informed regarding all transactions of defendants, and expended much time and effort investigating defendants' operations. That by reason of such audits and examinations said Board knew, or should have known, that the purchase orders and transactions aforesaid, and the defendants likewise, were wholly exempt from renegotiation under said Act of 1943, as well as under the Board's Regulations, and the instructions issued to it by the Judge Advocate General.

V.

That said Board unlawfully and erroneously applied section 403(a)(6) of said Act, in that they denied to defendants the benefit of the exemption of \$500,000 granted therein by arbitrarily declaring all the excess in alleged receipts of \$38,442.26 over said exemption to be excessive profits, when by the terms of said section said sum of \$38,442.26 if actually received or accrued, was a part of defendants' gross receipts and therefore subject to deduction of a proportional percentage of operating costs in the same percentage as in the receipts and accruals constitut-

ing said \$500,000 exemption for said year 1943. That the sum of \$32,160.84 [104] is the amount of operating costs and expenses which would be properly deductible from said sum of \$38,442.36, leaving only the balance of \$6,281.42 as alleged excessive profits in excess of said exemption of \$500,000, based on the assumption of the Boards computations aforesaid. That such application of said Renegotiation Act of 1943 by said Board is repugnant to said Act, and to sub-section 1 of Section 8 of Article I of the United States Constitution, in that it is discriminatory, is not uniformly applied as required by said section, deprives defendants of said exemption, and resulted in taking defendants' property without due process of law without just compensation in violation of the Fifth Amendment to said Constitution.

VI.

Said Board exceeded its power, authority, and jurisdiction in the following particulars, to-wit:

(a) It increased defendants' net income from said sum of \$108,184.18 to said amount of \$156,055.59 by adding thereto alleged profits not received or accrued as specified and limited in said Renegotiation Act of 1943.

(b) It rejected deductions for necessary and ordinary expenses of the defendants' business for said year 1943, and thereby unlawfully and arbitrarily increased their alleged profits.

(c) It denied defendants' exemption from all renegotiation under said Act, even though defendants' gross receipts from transactions within the purview

of said Act were less than the \$500,000 exemption granted by said section 403(c)(6) thereof.

(d) It declared all moneys in excess of \$500,000 exemption to be excessive profits received and accrued, and recaptured the same by means of said agreement.

(e) It arbitrarily included in defendants' gross income receipts from nonrenegotiable purchase orders and transactions, and included moneys not received or accrued as required by said Act.

(f) It executed said agreement, and required defendants so to do, even though the subject matter thereof was not within the scope of said Act or of the jurisdiction of said Board.

(g) It included in said agreement recitals of facts which were and are wholly false and untrue, and which were known to be such by said Board.

For Their Second Defense to the Amended Complaint Herein the Defendants Allege:

I.

The defendants repeat and reallege as a part of this defense each and all the allegations and denials contained in paragraphs I to VI of their Answer, and paragraphs I to VI of their First Affirmative Defense with like effect and as if herein set forth in full.

II.

That the total amount ordered withheld by said Board, as set forth in paragraph VI of the complaint, from defendants' debtors, namely: Garrett Corporation, a corporation; California Institute of Technol-

ogy, and Douglas Aircraft Company, Inc., and placed within and now held and retained in the exclusive control of plaintiff is the sum of \$14,662.83. That by reason of the facts hereinbefore alleged the plaintiff is indebted to defendants in said sum together with interest thereon at 6% per annum from the respective dates of each such withholding, and the defendants are entitled to the repayment thereof.

For Their Third Defense to the Amended Complaint
Herein the Defendants Allege:

I.

That paragraph 8 of said Agreement of December 19, 1944, which purports to make the same final and conclusive according to its terms, is predicated on and recites verbatim section 403(c)(4) of said Renegotiation Act of 1943. That said paragraph 8 and said section 403(c)(4) are repugnant and contrary to public policy and to sections 1 and 2 of Article III of the Constitution of the United States, in [106] that they attempt to and do deprive the constitutional courts of the United States of their inherent jurisdiction in equity and at law to interpret, construe, reform, rescind, to hold unlawful and set aside said Board's action, their findings and conclusions found to be arbitrary, capricious, abuse of discretion, not in accordance with law, contrary to constitutional rights, powers, privilege, or immunity, in excess of statutory jurisdiction, authority or limitations, and to determine the validity of said instrument, to deprive said courts of power to restrain public officers and agencies from transgressing their powers and authority; to deprive, and do now deprive, defend-

ants of relief in equity and at law to which they are entitled and which is guaranteed to them by said Constitution and its Amendments thereto; that said paragraph 8 of said Agreement and said section 403(c) (4) of said Act stand as a bar to the only relief adequate and available for defendants; that the same are discriminatory and arbitrary and deny valuable rights and privileges to defendants while conferring them on others; that they unlawfully delegate to agents of plaintiff the power to take defendants' property without due process or just compensation, are confiscatory and arbitrary, and are therefore void.

II.

That said paragraph 8 of said Agreement and said section 403(c) (4) of said Renegotiation Act of 1943 are repugnant to the federal Administrative Procedure Act (5 U. S. C. A. secs. 100 et seq.), and more particularly to sections 1008 and 1009 thereof, in that they disregard the jurisdictional limitations imposed by section 403(a) (6), 403(a) (9), 403(a) (B), 403(c) (1) and (3), 403(c) (6) and 403(i) (1) (D) of said Renegotiation Act of 1943, and which are enforceable under section 1008 of said Administrative Procedure Act, and in that they deny to the courts the duty and power of review granted by section 1009 of said Administrative Procedure Act. [107]

For Their Fourth Defense to the Amended Complaint Herein the Defendants Allege:

That by reason of the facts, circumstances and grounds hereinbefore alleged in defendants' First, Second and Third Defenses which are hereby made

a part hereof with the same force and effect as though herein set forth in full, the defendants were induced to, and did, on or about July 11, 1945, pay the sum of \$11,136 to said Board, but, nevertheless, paid the same under protest and without prejudice to, or any waiver of, defendants' rights in the premises. That subsequent to such payment and on or about October 23, 1945, defendants received a statement "of the facts and reasons" for the determination made by said Board pursuant to section 403(c)(1) of said Act, whereby, inter alia, the defendants first discovered that they were not subject to said Renegotiation Act of 1943 or to the jurisdiction of said Board, and that plaintiff had no right to the receipt of said money and has none to the retention thereof. That therefore said sum of \$11,136 is due and owing from plaintiff to the defendants together with the interest thereon from the date of payment thereof.

For Their Fifth Defense Herein the Defendants
Allege:

That the Treasury Department of plaintiff, through its Bureau of Internal Revenue found and determined defendants' income for tax liability purposes for said year 1943 was \$108,184.18, which was \$47,871.41 less in amount than theretofore found by said Board. That said Board and plaintiff are bound by such determination of the Treasury Department as appears from instructions of the Judge Advocate General to the Price Adjustment Sections, Text No. 12-219, pp. 403, 404, and also by the Regulations of said Board.

For Their Sixth Defense Herein the Defendants
Allege:

That neither said Board, nor its agents or servants, were or are vested with any power or authority to make any order, take any action, or enter into any agreement in excess of the power and authority conferred upon them by said Renegotiation Act of 1943, and when said [108] Board exceeded its jurisdiction as hereinbefore set forth the execution of said Agreement of December 19, 1944, was a nullity, not binding the parties thereto.

Wherefore, defendants pray for a declaratory judgment finding as follows, to-wit:

(a) That said Agreement of December 19, 1944, is illegal and void.

(b) That defendants' net income for the fiscal year 1943 as defined by said Renegotiation Act of 1943 was the sum of \$108,184.18, as determined by the Treasury Department as aforesaid, and said Board is bound thereby.

(c) That defendants are wholly exempted from renegotiation under said Act.

(d) That said War Contracts Price Adjustment Board, its agents, representative and servants exceeded their jurisdiction and powers in the premises.

(e) That said Board, its agents and servants practiced fraud and malfeasance upon defendants within the purview of said Act.

(f) That defendants are discharged from all lia-

bility under said Agreement and from under said Act.

(g) That defendants are entitled to recover all the moneys ordered withheld for the account of plaintiff from defendants' debtors, Garrett Corporation, California Institute of Technology, and Douglas Aircraft Company, Inc., aggregating the sum of \$14,-662.83, together with the interest thereon at 6% per annum from date of withholding.

(h) That plaintiff is indebted to defendants in the sum of \$11,136 heretofore paid under protest with interest thereon from July 11, 1945.

(i) That defendants have such other and further relief as may be just and equitable.

/s/ R. B. SAMMONS,
Attorney for Defendants. [109]

I certify that I have mailed a copy of the foregoing Amended Answer to James M. Carter, United States Attorney c/o Robert E. Wright, Assistant U. S. Attorney, 600 Federal Building, Los Angeles 12, California, this 16th day of October, 1947.

/s/ R. B. SAMMONS,
Attorney for Defendants.

[Endorsed]: Filed Oct. 16, 1947. [110]

[Title of District Court and Cause.]

ORDER SUBSTITUTING EXECUTORS OF
DECEASED DEFENDANT'S ESTATE AS
PARTIES DEFENDANTS

This matter was heard on motion of R. B. Sammons for an order substituting Freda Mary Vokal, Charles Davison, and Romeyn B. Sammons as parties defendants herein in place of Paul F. Vokal, deceased, and it appearing to the Court that Paul F. Vokal died on the 28th day of June, 1948, and that said Freda Mary Vokal, Charles Davison and Romeyn B. Sammons are the duly appointed and qualified Executors of the Estate of said Paul F. Vokal, deceased, it is

Ordered, that Freda Mary Vokal, Charles Davison and Romeyn B. Sammons be and they are hereby substituted as parties defendants herein in place of Paul F. Vokal, deceased, without prejudice to the proceedings heretofore had herein.

Dated October 4, 1948.

/s/ WM. C. MATHES,
Judge.

[Endorsed]: Filed Aug. 5, 1948. [116]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR SUMMARY JUDGMENT FOR PLAINTIFF AND AGAINST DEFENDANTS, UNDER F.R.C.P. 56 (a)

To the Defendants Freda Mary Vokal, Charles Davison, and Romeyn B. Sammons, Executors of the Estate of Paul F. Vokal, Deceased; and Their Attorneys Romeyn B. Sammons and Frank C. Shoemaker:

Please Take Notice that on Monday, November 22, 1948, at ten o'clock a.m., or as soon thereafter as counsel may be heard, the United States of America, by and through its counsel James M. Carter, United States Attorney, Clyde C. Downing and Bernard B. Laven, Assistant United States Attorneys, will move the above-entitled Court, Honorable William C. Mathes, Judge presiding, in the Courtroom of the Federal Building at Spring and Temple Streets, Los Angeles, California, that summary judgment be entered, in accordance with the Federal Rules of Civil Procedure, in favor of the plaintiff United States of America and against the defendants Freda Mary Vokal, Charles Davison, and Romeyn B. Sammons, Executors of the Estate of Paul F. Vokal, deceased; said Motion is based upon the pleadings, papers and stipulation on file herein, and upon the grounds that the pleadings, papers and [117] stipulation on file herein show there is no genuine issue as to any material fact and that the plaintiff United States of America, the moving party herein, is entitled to judgment

against the defendants and each of them as a matter of law.

Dated this 9th day of November, 1948.

JAMES M. CARTER,

United States Attorney.

CLYDE C. DOWNING,

Assistant United States Attorney, Chief, Civil Division.

/s/ BERNARD B. LAVEN,

Assistant United States
Attorney.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Nov. 9, 1948. [118]

[Title of District Court and Cause.]

DEFENDANT'S OBJECTIONS TO PROPOSED SUMMARY JUDGMENT

The defendants pursuant to Local Rule 7, respectfully interpose their objections to the Summary Judgment proposed by plaintiff's counsel, to-wit:

I.

To paragraph A thereof adjudging that said Renegotiation Agreement dated December 19, 1944, for refund of excessive profits is valid and enforceable, for the reason that it sufficiently appears by defendants' answer that execution of said agreement was induced by fraud, misrepresentation, and mutual mistakes of law and fact.

II.

To paragraph B thereof for the reason that, it sufficiently appears in defendants' answer that said withholding orders directed to defendants' customers, Garrett Corporation, California Institute of Technology, and Douglas Aircraft Co., Inc., were null and void [136] for lack of jurisdiction on the part of plaintiff's agents to issue.

III.

To paragraph C thereof, for the reason that it sufficiently appears in defendants' answer that plaintiff never had jurisdiction over defendants or their profits for the year 1943, and that all moneys withheld from defendants still remain their property and are unlawfully withheld by plaintiff from them.

IV.

To paragraph D thereof, for the reasons that said actions No. 510156 and 508756 now pending in the Superior Court of Los Angeles County for the recovery of the moneys claimed by plaintiff herein were instituted prior to this action in the District Court, were properly available to these defendants against its customers, were not and are not forbidden expressly or impliedly by the Renegotiation Acts, nor made dependent upon completion of Tax Court proceedings, and every question raised by the pleadings herein can be determined in said actions; that defendants are subcontractors and are entitled to their remedies against their said contractors.

V.

To paragraph E thereof for the reasons hereinabove stated.

Dated December 17, 1948.

/s/ R. B. SAMMONS,
FRANK C. SHOEMAKER,
Attorneys for Defendants.

[Endorsed]: Filed Dec. 17, 1948. [137]

[Title of District Court and Cause.]

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

The defendants pursuant to Local Rule 7, through their counsel, hereby interpose their objections to the Findings of Fact and Conclusions of Law proposed by plaintiff's counsel, to-wit:

I.

To Findings I thereof, for the reason that it sufficiently appears by defendants' answer that there are many issues as to material facts.

II.

To Finding IV thereof, for the reason that it sufficiently appears by defendants' answer that the tax credit to which defendants are entitled under section 3806 of the Internal Revenue Code exceed said sum of \$13,001.23.

III.

To Finding V thereof, for the reason that the Tax Court of the [138] United States had no jurisdiction of the matters involved herein.

IV.

To Finding VI thereof, for the reason that it sufficiently appears by defendants' answer that the execution of said contract of December 19, 1944, was induced by fraud, misrepresentation and mutual mistakes of law and fact.

V.

To Finding VII thereof, for the reason that said first, third, fifth and sixth defenses alleged in said amended answer are material defenses.

VI.

To Finding VIII thereof, for the reason that the United States instituted the action at bar and the defense is good as a recoupment. That the plaintiff cannot as against the claims of innocent parties hold their money which has gone into its treasury through the means of the fraud or mistake of its agents.

VII.

To Finding IX thereof, for the reasons stated.

To the Conclusions of Law thereof A to D for the reasons stated.

Dated December 17, 1948.

/s/ R. B. SAMMONS,

FRANK C. SHOEMAKER,

Attorneys for Defendants.

I certify that I have mailed a copy of the foregoing Objections to Bernard B. Laven, Assistant United States Attorney, 600 Federal Building, Los Angeles 12, California, this 17th day of December, 1948.

/s/ R. B. SAMMONS,
Defendants' Attorney.

[Endorsed]: Filed Dec. 17, 1948. [139]

[Title of District Court and Cause.]

FINDINGS OF FACT

The Motion of the plaintiff in the foregoing entitled case for Summary Judgment for plaintiff and against defendants, pursuant to Rule 56a of the Federal Rules of Civil Procedure, having been duly and regularly made and presented to the Court on the 22nd day of November, 1948, before the Honorable William C. Mathes, Judge presiding, James M. Carter, United States Attorney for the Southern District of California, Clyde C. Downing and Bernard B. Laven, Assistant United States Attorneys, appearing for plaintiff, Romeyn B. Sammons and Frank C. Shoemaker appearing for the defendants; and the Court having considered the pleadings, affidavits, exhibits, admissions and briefs of counsel, the cause was argued and submitted to the Court for consideration, decision and determination; and the Court, now being fully advised in the premises, makes the following Findings of Fact and Conclu-

sions of Law constituting the decisions of the Court in said action; [140]

I.

That there is no genuine issue as to any material fact and that plaintiff herein is entitled to a summary judgment as a matter of law.

II.

That the defendant Paul F. Vokal died on the 28th day of June, 1948, and that by Order of Court on the 4th day of October, 1948, Freda Mary Vokal, Charles Davison, and Romeyn B. Sammons, were substituted as executors in the place and stead of the said Paul F. Vokal as defendant herein;

III.

That each and all of the allegations set forth in paragraphs I, II, III, V, VI, VII and VIII of plaintiff's Amended Complaint are true;

IV.

That the tax credit to which the defendants are entitled under Section 3806 of the Internal Revenue Code is in the amount of \$13,001.22;

V.

That the Court further finds that the defendants' testator failed to file in the Tax Court of the United States any petition for redetermination of the amount of excessive profits as permitted by Section 403(e)(1) of the Renegotiation Act [50 U.S.C.

(App.) §1191 (e)(1)], notwithstanding the determination made by the War Contracts Price Adjustment Board;

VI.

That the defendants have not pleaded or offered to prove any fraud or malfeasance or wilful misrepresentation inducing the execution of the contract admitted to have been executed in paragraph III of plaintiff's Amended Complaint;

VII.

That the first, third, fifth and sixth defenses alleged in the Amended Answer of the defendants to plaintiff's Amended Complaint are insufficient as a matter of law and are hereby stricken upon the Court's own motion pursuant to Rule 12(f) of the Federal Rules of Civil Procedure;

VIII.

That the second and fourth defenses present cross-claims against the United States, each for a sum in excess of \$10,000, on which the plaintiff, the United States of America, as sovereign, has not consented to be sued in this Court, and this Court accordingly has no jurisdiction to render judgment on such cross-claims;

IX.

That each and all of the allegations set forth in defendants' Amended Answer to plaintiff's Amended Complaint inconsistent with the Findings of Fact herein are untrue.

CONCLUSIONS OF LAW

As conclusions of law from the foregoing facts the Court concludes:

A. That the plaintiff having heretofore filed and presented a Motion for Summary Judgment, the said Motion is hereby granted;

B. That there exists no genuine issue as to any material fact involved in determining the right of recovery in this cause; and

C. Plaintiff is therefore entitled to judgment as prayed for in the Amended Complaint as a matter of law;

D. Let judgment be entered accordingly.

Dated this 18th day of December, 1948.

/s/ WM. C. MATHES,

United States District Judge.

(Duly Verified.)

(Affidavit of Service by Mail.)

[Endorsed]: Filed Dec. 20, 1948. [142]

In the United States District Court in and for the
Southern District of California, Central Division

No. 6045—WM Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FREDA MARY VOKAL, CHARLES DAVISON,
and ROMEYN B. SAMMONS, Executors of the
Estate of Paul F. Vokal, Deceased,

Defendants.

SUMMARY JUDGMENT

The Motion of the plaintiff in the foregoing entitled cause for Summary Judgment for plaintiff and against defendants, pursuant to Rule 56a of the Federal Rules of Civil Procedure, having been presented to the Court, the Honorable William C. Mathes, Judge presiding, and submitted for decision, and the Court having considered the pleadings, affidavits, exhibits, admissions and briefs filed by counsel for plaintiff and defendants, and having heard oral argument of counsel for plaintiff and defendants upon the whole case; and having considered said Motion for Summary Judgment for plaintiff and being fully advised in the premises; and written findings of fact and conclusions of law having been signed by the Court and good cause appearing therefor;

It Is Hereby Ordered, Adjudged and Decreed

that plaintiff's Motion for Summary Judgment be and the same hereby is granted; and

It Is Further Hereby Ordered, Adjudged and Decreed as follows:

A. That the Renegotiation Agreement dated December 19, 1944, for [144] refund of excessive profits entered into between plaintiff and defendants (Paul F. Vokal and Freda Mary Vokal), a copy of which is annexed to plaintiff's Amended Complaint and marked Exhibit A by reference, is valid and enforceable;

B. That the defendants have no interest in any amount withheld by the Garrett Corporation, California Institute of Technology, and Douglas Aircraft Company, Inc., pursuant to withholding orders directed to said corporations, as alleged in paragraph VI of plaintiff's Amended Complaint;

C. That defendants have no right to the recovery by suit or otherwise of any of the amounts so withheld;

D. That the defendants, Freda Mary Vokal, Charles Davison, and Romeyn B. Sammons, Executors of the Estate of Paul F. Vokal, Deceased, their agents, servants and attorneys are forever restrained from further prosecuting the following entitled and numbered suits in the Superior Court of Los Angeles County, State of California, as follows: Paul F. Vokal, plaintiff, v. California Institute of Technology, defendant; No. 510156; Paul F. Vokal, plaintiff, v. Garrett Corporation, a corporation, defendant; No. 508756;

E. That plaintiff do have and recover of and from the defendants its costs and charges expended and have execution therefor. Costs taxed at \$24.70.

Dated: This 18th day of December, 1948.

/s/ WM. C. MATHES,
United States District Judge.

The undersigned attorney for plaintiff hereby approves the foregoing Judgment as to form.

Dated: This 14th day of December, 1948.

JAMES M. CARTER,
United States Attorney.
CLYDE C. DOWNING,
Assistant United States
Attorney.

/s/ BERNARD B. LAVEN,
Assistant United States
Attorney.

The undersigned attorneys for defendants hereby approve the foregoing Judgment as to form.

Dated: This day of December, 1948. [145]

ROMEYN B. SAMMONS,
FRANK C. SHOEMAKER,
Attorneys for Defendants.

Judgment entered Dec. 20, 1948. Docketed, Dec. 20, 1948. Book 54, Page 596. Edmund L. Smith, Clerk.

[Endorsed]: Filed Dec. 20, 1948. [146]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given,

That Freda Mary Vokal, Charles Davison, and Romeyn B. Sammons, Executors of the Estate of Paul F. Vokal, deceased, defendants above named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 20th day of December, 1948.

/s/ R. B. SAMMONS,
FRANK C. SHOEMAKER,
Attorneys for Defendants.

Mailed copy to U. S. Attorney, Feb. 15, 1949.
Edmund L. Smith, Clerk.

[Endorsed]: Filed Feb. 15, 1949. [148]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

Defendants set forth the following points on which they intend to rely on appeal, to-wit:

I.

The court erred in sustaining plaintiff's motion for summary judgment.

II.

The court erred in not overruling plaintiff's motion for summary judgment.

III.

The court erred in holding that the Renegotiation Agreement, dated December 19, 1944, for the refund of alleged excessive profits is valid and enforceable. [149]

IV.

The court erred in holding that defendants have no interest in any amount withheld by their testator's debtors pursuant to certain withholding orders directed thereto by plaintiff's agents.

V.

The court erred in holding that defendants have no right to the recovery by suit or otherwise to any amounts so withheld.

VI.

The court erred in restraining defendants from further prosecuting those certain actions in the Los Angeles Superior Court entitled: Paul F. Vokal, et ux. v. Garrett Corporation, numbered 508,756; and Paul F. Vokal et ux. v. California Institute of Technology, numbered 510,156, to recover certain moneys from their testator's debtors.

VII.

The Court erred in holding that there was no genuine issue as to any material fact, and that plaintiff was entitled to a summary judgment as a matter of law.

VIII.

The court erred in holding that each and all of the allegations set forth in paragraph VI of its complaint are true.

IX.

The court erred in holding that the full tax credit to which defendants' are entitled under section 3806 of the Internal Revenue Code was only \$13,001.22.

X.

The court erred in holding that defendants failure to file a petition in the Tax Court of the United States for redetermination of the amount of excessive profits pursuant to section 403(e)(1) of the Renegotiation Act of 1943 (50 U.S.C. (App.) (e)(1) was material, and the implied finding that defendants were in any wise bound to file such petition, or could have filed such petition in the circumstances in which defendants were placed. [150]

XI.

The court erred in holding that defendants did not plead or offer to prove fraud or wilful misrepresentation, or malfeasance inducing the execution of said Agreement of December 19, 1944, and mentioned in and attached to plaintiff's complaint.

XII.

The court erred in striking the first, third, fifth and sixth defenses alleged in defendants' answer as insufficient as a matter of law.

XIII.

The court erred in holding that the district court had no jurisdiction to render judgment for defendants on the second and fourth defenses set forth in the amended answer.

XIV.

The court erred in holding that each and all of the allegations set forth in defendants' amended answer inconsistent with the Findings of Fact were untrue.

XV.

The court erred in holding that plaintiff was entitled to judgment as prayed as matter of law.

Dated this 18th day of February, 1949.

R. B. SAMMONS,
FRANK C. SHOEMAKER,
Attorneys for Defendants.

By /s/ R. B. SAMMONS.

(Acknowledgment of Service.)

[Endorsed]: Filed Feb. 18, 1949. [151]

[Title of District Court and Cause.]

DESIGNATION OF RECORD FOR APPEAL

To the Clerk of the District Court of the United States for the Southern District of California, Central Division:

You are hereby requested to prepare, certify and transmit to the Clerk of the United States Court of Appeals for the Ninth Circuit, with reference to the Notice of Appeal heretofore, and on February 15th, 1949, filed by the Defendants in the above-entitled cause, transcript of the record in the above cause, prepared and transmitted as required by law and by the rules of said Court, and to include in such transcript of record the following documents, or certified copies thereof, to-wit:

1. Complaint and Summons.
2. Answer and counterclaim.
3. Amended complaint.
4. Answer to Amended Complaint and Counterclaim. [153]
5. Plaintiff's Pre-Trial Memorandum.
6. Defendants' Pre-Trial State of Facts and Reply Memorandum of Law.
7. Amended Answer to Amended Complaint.
8. Stipulation of Parties Pursuant to Order of Pre-Trial Hearing.

9. Defendants' motion and order for substitution of Executors as defendants.

10. Notice of Motion for Summary Judgment for Plaintiff.

11. Defendants' Points and Authorities in opposition to Motion for Summary Judgment.

12. Order on Motion for Summary Judgment.

13. Defendants' Objections to proposed Summary Judgment.

14. Notice by Clerk of Entry of Judgment.

15. Findings of Fact and Conclusions of Law.

16. Summary Judgment.

17. Notice of Appeal with date of Filing.

18. Statement of Points on Appeal; Assignment of Errors.

19. This Designation of Record.

Dated this 18th day of February, 1949.

R. B. SAMMONS and
FRANK C. SHOEMAKER,
Attorneys for Defendants.

By /s/ R. B. SAMMONS.

(Acknowledgment of Service.)

[Endorsed]: Filed Feb. 18, 1949. [154]

[Title of District Court and Cause.]

APPELLEE'S DESIGNATION OF ADDI-
TIONAL MATTER FOR RECORD

The appellee, through its counsel, in accordance with Rule 75 (a) of the Rules of Civil Procedure, designates for inclusion in the record on appeal, in addition to those designations made by appellant, the following:

Points and Authorities in Support of Motion for Summary Judgment by Plaintiff against Defendants.

JAMES M. CARTER,
United States Attorney.

CLYDE C. DOWNING,
Assistant United States Attorney, Chief, Civil Division.

/s/ BERNARD B. LAVEN,
Assistant United States Attorney, Counsel for Plaintiff-Appellee.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Feb. 23, 1949. [156]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 157, inclusive, contain the original Complaint for Money Judgment; Summons and Return of Service; Answer and Counterclaim; Amended Complaint for Declaratory Judgment; Answer to Amended Complaint and Counterclaim; Plaintiff's Pre-Trial Memorandum; Defendants' Pre-Trial Statement of Facts and Reply Memorandum of Law; Amended Answer to Amended Complaint; Stipulation of Parties Pursuant to Order of Pre-Trial Hearing; Motion and Order Substituting Executors as Parties Defendants; Notice of Motion for Summary Judgment for Plaintiff and Against Defendants Under F.R.C.P. 56(a); Points and Authorities in Support of Motion for Summary Judgment by Plaintiff Against Defendants; Points and Authorities for Defendants in Opposition to Motion for Summary Judgment; Order on Motion for Summary Judgment; Defendants' Objections to Proposed Summary Judgment and Findings of Fact and Conclusions of Law; Findings of Fact and Conclusions of Law; Summary Judgment; Notice of Entry of Judgment; Notice of Appeal Statement of Points on Appeal; Designation of Record on Appeal and Appellee's Designation of Additional Matter for Record which constitute the record on ap-

peal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00, which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 18th day of March, A.D. 1949.

[Seal]

EDMUND L. SMITH,
Clerk.

[Endorsed]: No. 12209. United States Court of Appeals for the Ninth Circuit. Freda Mary Vokal, Charles Davison and Romeyn B. Sammons, Executors of the Estate of Paul F. Vokal, Deceased, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed March 21, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12209

FREDA MARY VOKAL, CHARLES DAVISON,
and ROMEYN B. SAMMONS, Executors of the
Estate of Paul F. Vokal, Deceased,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON APPEAL AND
DESIGNATION OF RECORD

To the Clerk of the United States Court of Appeals
for the Ninth Circuit:

Appellants, pursuant to Rule 19(6) of this court,
hereby set forth the following points on which they
intend to rely on this appeal, to-wit:

That the District Court of the United States for
the Southern District of California, Central Divi-
sion, erred in the following particulars, viz:

Point I.

In sustaining appellee's motion for summary
judgment.

Point II.

In not overruling appellee's motion for summary
judgment.

Point III.

In holding that the Renegotiation Agreement, dated December 19, 1944, for the refund of alleged excessive profits is valid and enforceable.

Point IV.

In holding that appellants have no interest in any amount withheld by their testator's debtors pursuant to certain withholding orders directed thereto by appellee's agents.

Point V.

In holding that appellants have no right to the recovery by suit or otherwise to any amounts so withheld.

Point VI.

In restraining appellants from further prosecuting those certain actions in the Los Angeles Superior Court, entitled: Paul F. Vokal, et ux., plaintiffs v. Garrett Corporation, defendant, numbered 508756; and Paul F. Vokal, et ux., plaintiff's v. California Institute of Technology, defendant, numbered 510156, to recover certain moneys from their testator's debtors.

Point VII.

In holding that there was no genuine issue as to any material fact, and that appellee was entitled to a summary judgment as a matter of law.

Point VIII.

In holding that each and all of the allegations set forth in paragraph VI of appellee's complaint are true.

Point IX.

In holding that the full tax credit to which appellants are entitled under section 3806 of the Internal Revenue Code was only \$13,001.22.

Point X.

In holding that appellants' failure to file a petition in the Tax Court of the United States for the redetermination of the amount of alleged excessive profits pursuant to section 403(e)(1) of the Renegotiation Act of 1943 (50 U.S.C. (App.) (e) (1) was material, and the implied finding that appellants were in any wise bound to file such petition in the circumstances in which appellants were placed.

Point XI.

In holding that appellants did not plead or offer to prove fraud or wilful misrepresentation, or malfeasance inducing the execution of said Agreement of December 19, 1944, and mentioned in and annexed to appellee's complaint.

Point XII.

In striking the first, third, fifth and six defenses alleged in appellants' answer as insufficient as a matter of law.

Point XIII.

In holding that the District Court had no jurisdiction to render judgment for appellants on the second and fourth defenses set forth in the amended answer.

Point XIV.

In holding that each and all of the allegations set forth in appellants' amended answer inconsistent with the Findings of Fact were untrue.

Point XV.

In holding that appellee was entitled to judgment as prayed as matter of law.

DESIGNATION OF RECORD ON APPEAL

You are requested to include in the printed record the following parts set forth in the certified record of the Clerk of the District Court, which appellants deem necessary for the consideration of their Points on this appeal, to-wit:

Complaint for Declaratory Judgment, amended.

Answer to Amended Complaint, amended.

Designation of Record on Appeal, appellants'.

Designation of Record on Appeal, Appellee's.

Notice of Appeal, proof of service.

Statement of Points on Appeal.

Defendants' Objections to plaintiff's Findings of Fact and Conclusions of Law.

Defendants' Objections to proposed summary judgment.

Findings of Fact and Conclusions of Law.

Motion for Summary Judgment, plaintiff's.

Summary Judgment.

Summons.

Dated: March 18, 1949.

R. B. SAMMONS and

FRANK C. SHOEMAKER,

Attorneys for Appellants.

By /s/ R. B. SAMMONS.

[Endorsed]: Filed March 21, 1949.

